

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 811 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

STATE OF GUJARAT

Versus

MOHAN RAMJI & ORS.

Appearance:

Shri S.T. Mehta, Additional Public Prosecutor,
for the Appellant

Shri Y.S. Lakhani, Advocate, for the Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 27/09/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate (First Class) at Veraval on 3rd July 1987 in Criminal Case No. 1243 of 1983 is under challenge in this appeal by leave of this Court under sec. 378 of the Code of Criminal Procedure 1973 (the

Cr.P.C. for brief). By his impugned judgment and order, the learned trial Magistrate acquitted the respondents herein of the offences punishable under sections 323, 325, 504 and 506(2) read with sec. 34 of the Indian Penal Code, 1860 (the IPC for brief).

2. The facts giving rise to this appeal move in a narrow compass. The incident giving rise to the prosecution is stated to have occurred on 14th January 1987 at about 10 a.m. in village Janadhar taluka Talala. The complainant had gone to his field. He found that his motor for taking water for irrigation was not working. He then realised that the fuse was missing. He thought that the neighbouring owner might have removed it. He tried to enquire with his neighbour and thereupon the neighbour, his wife and their two sons assaulted him with iron pipes. In the course of beating two persons, named, Kanji and Khimji, went there. The complainant is stated to have fallen unconscious. He was carried to the primary health centre at Talala for treatment. After administration of primary treatment, the case was referred to the Medical Officer at Veraval. He was thereupon carried to the Municipal General Hospital at Veraval. He was given treatment thereat. The Medical Officer thereat found it to be a medico-legal case. He therefore informed the police about the incident. It appears that at about 6 p.m. the complaint of the injured victim, that is, the complainant was recorded. On conclusion of investigation, the necessary charge-sheet was submitted to the court of the Judicial Magistrate (First Class) at Veraval charging the respondents herein with the offences punishable under sections 323, 325, 504 and 506(2) read with sec. 34 of the IPC. It came to be registered as Criminal Case No. 1243 of 1983. The charge against the respondents as the accused was framed on 6th December 1983. No accused pleaded guilty to the charge. Thereupon they were tried. After recording the prosecution evidence and after recording the further statement of each accused under sec. 313 of the Cr.P.C. and after hearing the parties, by his judgment and order passed on 3rd July 1987 in Criminal Case No. 1243 of 1983, the learned trial Magistrate acquitted the respondents of the offences with which they stood charged. That aggrieved the prosecution agency. It has therefore by leave of this Court invoked its appellate jurisdiction under sec. 378 of the Cr.P.C. for questioning the correctness of the aforesaid judgment and order of acquittal passed by the learned trial Magistrate.

3. Learned Additional Public Prosecutor Shri Mehta

for the appellant-State has taken me through the entire evidence on record in support of his submission that the conclusion reached by the trial Court that the prosecution could not establish its case beyond reasonable doubt at trial cannot be sustained in law. Learned Additional Public Prosecutor Shri Mehta for the appellant-State has submitted that, in view of the overwhelming evidence on record, there is no room for doubt left that the prosecution has brought the guilt home to the accused beyond any reasonable doubt. As against this, learned Advocate Shri Lakhani for the respondents has urged that the learned trial Magistrate has carefully scanned and scrutinized the evidence on record and has come to the conclusion that the charge against the accused was not established beyond reasonable doubt and that conclusion calls for no interference by this Court in this appeal. It has further been urged on behalf of the respondents that in any case the view taken by the learned trial Magistrate on the basis of the material on record is a possible view and, even if this Court takes a different view of the matter, the judgment and order of acquittal in appeal deserves to be affirmed.

4. In his impugned judgment and order the learned trial Magistrate has highlighted several contradictions appearing on the record not only qua the complainant and his witnesses but also qua the complainant and his complaint. Contradictions of substantial nature are also found in the oral testimonies of the witnesses qua their police statements. I do not propose to burden this judgment of mine by giving details of such contradictions.

5. A strange feature appearing in this case deserves to be noted. It is the case of the complainant that he fell unconscious after receiving severe beatings from the respondents herein at the relevant time. There is nothing on record to show or to suggest as to who carried the complainant to the Doctor at Talala and in what condition. It is an admitted position on record that the complainant was carried to the Medical Officer of the Primary Health Centre at Talala. He has been examined at Ex. 37 on the record of the trial. His certificate at Ex. 38 on the record of the trial nowhere mentions as to the history of the injuries. In his oral testimony at Ex. 37 he has stated that the complainant told him about the history of the injuries on account of beating by respondent No.1 and his two sons. If that be so, the complainant could be said to have been very much conscious at the relevant time. It is not the case of the Medical Officer at Talala at Ex. 37 that the case

history was given by the persons who brought the complainant to him. It is his specific case in his cross-examination that the complainant gave him the history of injuries found on his person. If the Medical Officer at Ex. 37 is right, the complainant's version that he fell unconscious after receiving severe beating from the respondents herein and regained consciousness only in the hospital at Veraval, falls to the ground.

6. It transpires from the evidence that the Medical Officer at Talala referred the case for further treatment to some medical officer at Veraval. It appears that the complainant was carried to the Municipal General Hospital thereat. He was treated by Dr. Movalla thereat. He has been examined at Ex. 20 on the record of the case. He has clearly stated that the complainant was brought to him without any police yadi. He therefore informed the police about the incident. This strange feature appearing on the record of the case would go to show that the Medical Officer at Talala did not inform the police of the incident. Ordinarily, when a case of injuries received on account of beating is brought to a medical officer, it becomes his bounden duty to inform the matter to the police unless the police is informed of the incident or the injured is brought for medical treatment with a police yadi. The witness at Ex. 37 was a Medical Officer at Talala. The prosecution has made no attempts to elicit from him as to why he did not inform the police of the incident. That would rule out the possibility of giving of any case history to the witness at Ex. 37 by the complainant or his allies accompanying him to the dispensary at Talala. The other possibility is that the case history was of a fall of the complainant from an electric pole as suggested to him by and on behalf of the defence and as stated in each one's further statement and that was the reason why the Medical Officer at Talala did not treat it as a medico-legal case and did not inform the police of the incident. Be that as it may, the fact remains that the police was not informed of the incident in the first instance.

7. In view of my aforesaid discussion, I am of the opinion that the view taken by the learned trial Magistrate is a possible view and it does not call for any interference by this Court in this appeal. This appeal therefore deserves to be dismissed.

8. In the result, this appeal fails. It is hereby dismissed.
